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December 30, 2009

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

VIA ELECTRONIC FILING

Re: STB Finance Docket No. 35141 U S Rail Corporation –
Construction and Operation Exemption – Brookhaven Rail Terminal

Dear Ms. Brown,

Pursuant to the Board's June 12, 2009 Decision in this proceeding, Petitioner U S Rail Corporation ("U S Rail") submits the following monthly status report. After engaging for more than an entire year in good faith negotiations with the Town of Brookhaven ("Brookhaven") to resolve all differences between the parties regarding construction and operation of the Brookhaven Rail Terminal ("BRT"), U S Rail believes the parties are at an impasse and the Board's intervention is necessary.¹

Accordingly, Petitioner respectfully requests the Board lift the Stay imposed by its June 12, 2009 Decision, restore this matter to its active docket, and issue a Scheduling Order establishing dates for U S Rail's response to Brookhaven's

¹ The settlement discussions, in addition to involving these parties and this STB proceeding, also encompassed Sills Road Realty, LLC ("Sills") in related litigation pending in the U.S. District Court for the Eastern District of New York under docket number 07 CV 4594.

Motion to Compel Discovery, Brookhaven's response to U S Rail's supplemental petition, and US Rail's reply thereto.

As set forth in the accompanying verified statement of Gerard T. Drumm, on numerous occasions beginning in September 2008 and continuing through December 2009, U S Rail engaged Brookhaven in extensive settlement discussions. By March 2009 those discussions had progressed to the point where Brookhaven presented U S Rail with a proposed Stipulation of Settlement. In June 2009 Petitioner agreed to the terms of the Stipulation of Settlement proposed by the Town. Over the next six months, Petitioner acquiesced to each and every additional modification proposed by the Town, including significantly revising the BRT Site Plan to accommodate Brookhaven's concerns.

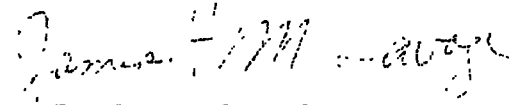
On December 4, 2009, Brookhaven's counsel orally presented Petitioner's counsel with a vague outline of three new demands: (1) limiting the amount of certain commodities that may be shipped through the BRT, (2) imposing an exceptional rezoning fee in an unspecified amount exceeding \$1,000,000, and (3) seeking a covenant prohibiting future expansion of the BRT to adjoining tracts of land in which neither the Petitioner nor any related entity had any ownership or other interest. Petitioner's counsel requested Brookhaven provide a written proposal memorializing these demands prior to the Town Board's December 8, meeting. No such written proposal was, nor has been produced.

On December 9, 2009 Petitioner's counsel wrote to Brookhaven's attorney pointing out that the Town's newest demands are neither reasonable, nor are they in accord with the Rail Transportation Policy of the United States, as they seek to impose an undue burden upon interstate rail transportation. Accordingly, the letter continued, Petitioner believes the parties have reached an impasse. Petitioner requested the Town's consent to submitting the matter to the STB for mediation of the terms of the Proposed Settlement. Brookhaven counsel's orally responded denying that an impasse exists, and stating that there is, accordingly, no need for mediation.

As the Board can see, Petitioner has left no stone unturned in its willingness to achieve a negotiated settlement with the Town. U S Rail believes that for the Town to raise three entirely new and entirely inappropriate demands after many months of negotiation had essentially produced an Agreement waiting only ratification by the Town Board, is neither fair nor reasonable. Accordingly, U S Rail requests the Stay be lifted and the matter be restored to the Board's active Docket for expedited disposition.

We thank the Board for its time and consideration.

Respectfully submitted,
John D. Heffner, PLLC

A handwritten signature in dark ink, appearing to read "James H. M. Savage". The signature is written in a cursive, somewhat stylized script.

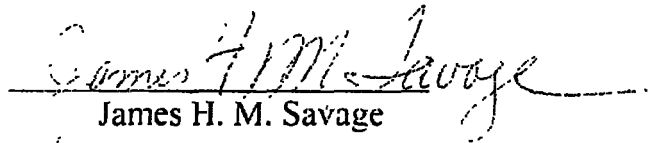
By: James H. M. Savage
Of Counsel

Attorneys for Petitioner
U S Rail Corp.

Att.

CERTIFICATION OF SERVICE

I, James H. M. Savage, an attorney-at-law of the District of Columbia, certify that I have served this day by electronic mail a true copy of the within pleading upon counsel for the Town of Brookhaven and by first class mail upon the New York State Department of Transportation.


James H. M. Savage

Dated: December 30, 2009

SERVICE LIST

| | |
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| Party of Record: Town of Brookhaven | Mark A. Cuthbertson Law Offices of Mark A. Cuthbertson 434 New York Avenue Huntington, NY 11743 |
| Party of Record: New York State Department of Transportation | Robert A. Rybak 50 Wolf Road Albany, NY 12232 |

VERIFIED STATEMENT OF GERARD T. DRUMM

I, Gerard T. Drumm, of full age, state the following, under penalty of perjury:

1. I am the Chief Financial Officer and General Counsel of Sills Road Realty, LLC ("Sills"). I am responsible for financial and legal matters with respect to Sills and its affiliated companies. I am fully familiar with the facts and circumstances of this matter from my personal knowledge.

2. I submit this verified statement in support of the petition of U S Rail Corporation ("U S Rail") for authority to construct and operate the Brookhaven Rail Terminal ("BRT").

3. In September 2008, in an effort to resolve all outstanding issues relating to the BRT, U S Rail and Sills commenced settlement discussions with the Town of Brookhaven ("Brookhaven").¹ At a meeting with the Town Board on

¹ For background information regarding Petitioner's interactions with the Town of Brookhaven prior to September 2008, the Board is referred to my April 22, 2008 verified statement filed on May 2, 2008 in STB Finance Docket No. 35036 U S Rail Corporation-Construction and Operation Exemption-Brookhaven Rail Terminal.

September 18, 2008 the parties discussed Brookhaven's concerns with the BRT and potential settlement options.

4. On October 29, 2008 the South Yaphank Civic Association issued a letter of support to Brookhaven in favor of the BRT.

5. At a meeting on January 9, 2009, representatives of U S Rail, Sills and Brookhaven discussed Brookhaven's terms for a potential settlement agreement, including incorporation of certain requirements of Brookhaven Code into the conceptual design of the BRT.

6. On or about March 5, 2009 Brookhaven provided U S Rail and Sills with a first draft of a settlement agreement ("Proposed Settlement") and appointed Brookhaven planning staff to comment on the BRT conceptual design.

7. During March and early April, 2009 U S Rail and Sills formulated and provided their comments to Brookhaven regarding the Proposed Settlement.

Among those items incorporated are the concepts of a "Reference Site Plan" and agreed legal requirements ("Applicable Standards") to govern construction of the BRT. U S RAIL and Sills authorized Bowne Engineering ("Bowne") to revise the BRT conceptual design to meet the terms of the Proposed Settlement , including extensive revisions to site access, reserving vegetative space along the western boundary of the site and within the site and moving the entire track layout to the east and develop a list of the Applicable Standards. This first revision of the BRT

Reference Site Plan in conformance with the terms of the Proposed Settlement was completed April 10, 2009.

8. The first meeting among representatives of U S Rail, Sills and Brookhaven planning officials to review the Reference Site Plan and Applicable Standards occurred on April 21, 2009. Brookhaven requested additions to Reference Site Plan and Applicable Standards relating to employee parking, site lighting, drainage, dust control, secondary emergency access, fire control, and building and crushed aggregate pile height restrictions. On April 23, 2009 Bowne completed revisions to the Reference Site Plan to conform to Brookhaven's April 21st comments.

9. Between April and June 2009 various telephone and email communications occurred regarding the Proposed Settlement terms, including a meeting among representatives of U S Rail, Sills and Brookhaven Supervisor Mark Lesko on June 8, 2009.

10. Between June 12 and 15, 2009, the Proposed Settlement and Reference Site Plan were revised to incorporate Brookhaven's comments regarding prohibition on using the BRT as a disposal facility for any type of solid waste, construction monitoring and reporting by an independent engineering firm and other matters. At this point, U S Rail and Sills have agreed to all terms of the Proposed Settlement. Brookhaven advises that the Proposed Settlement will be

listed for consideration by the Brookhaven Board Town at a June 18, 2009 meeting, but consideration was deferred. Consideration of the Proposed Settlement by Brookhaven was repeatedly deferred at various Board meetings and work sessions during July and August, 2009.

11. U S Rail and Sills met with Brookhaven Economic Development personnel to discuss the BRT and the terms of the Proposed Settlement in early September 2009, followed by a presentation, on September 10, 2009 to the Brookhaven Town Board regarding the BRT, eliciting further comments by Brookhaven on the terms of the Proposed Settlement and requesting Board consideration of the Proposed Settlement at the Town Board's September 2009 meeting.

12. On September 14, 2009, counsel for U S Rail and Sills agreed to Brookhaven's September 10th comments with respect to waste incineration and other matters in anticipation of Board action. On September 16, 2009 counsel for U S Rail and Sills was informed that no consideration of the Proposed Settlement would take place prior to the November 3, 2009 election.

13. On November 13, 2009 Brookhaven's attorney presents additional comments on the terms of the Proposed Settlement. On November 23, 2009 attorneys for U S Rail and Sills agree to the Town's revised Proposed Settlement terms. U S Rail and Sills were led to believe the matter would be considered at the

November 24, 2009 Town board meeting. Brookhaven requested Petitioner's attorneys attend the November 24th meeting. However, no action was taken on the Proposed Settlement at that meeting.

14. On December 4, 2009 Brookhaven's counsel orally communicated a vague outline of three new demands (1) limiting the amount of containerized construction and demolition waste material that may be shipped through the BRT, (2) imposing an exceptional rezoning fee, and (3) seeking a covenant prohibiting future expansion of the BRT to adjoining tracts of land in which neither U S Rail, Sills nor any related entity has any ownership or other interest . Petitioner's attorneys requested the Town provide a written proposal to this effect prior to Brookhaven's December 8, 2009 Board meeting. No written proposal was produced.

15. On December 10, 2009 Petitioner's counsel wrote to Brookhaven's attorney pointing out that the Town's newest demands were neither reasonable, nor were they in accord with the Rail Transportation Policy of the United States, as they seek to impose an undue burden upon interstate rail transportation. Accordingly, the letter continued, Petitioners believed the parties had reached an impasse. Petitioner requested the Town's consent to submitting the matter to the STB for mediation of the terms of the Proposed Settlement. Brookhaven's counsel

orally responded that no impasse existed, and hence, there was no need for mediation.

16. As the Board can see, Petitioner has left no stone unturned in its efforts to achieve a negotiated settlement with the Town, including significantly revising the BRT site plan to accommodate Brookhaven's concerns. Petitioner believes that for the Town to raise three entirely new and entirely inappropriate demands after many months of negotiation had essentially produced an agreement waiting only ratification by the Town Board, is neither fair nor reasonable. Accordingly, Petitioner U S Rail requests the Stay be lifted and the matter be restored to the Board's active Docket for expedited disposition.